

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T14-0047
14001509228**

HENRIQUE DASILVA

DECISION

PER CURIAM: Before this Panel on September 10, 2014—Magistrate Abbate (Chair), Magistrate Noonan, and Magistrate Goulart sitting—is Henrique Dasilva’s (Appellant) appeal from a decision of Judge Almeida sustaining the charged violation of G.L. 1956 § 31-14-2 (a), “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 19, 2014, Trooper Madix of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on August 5, 2014.

At trial, the judge explained to Appellant the trial process. (Tr. at 1.) Subsequently, the trial judge asked if Appellant understood, or if Appellant needed a translator. Id. The Appellant responded that he understood the process, and he declined a translator. Id. Next, the trial judge asked Appellant if he understood the charges against him. (Tr. at 1-2.) The Appellant responded affirmatively, adding multiple times that he spoke English well enough to understand this matter, and he did not need a translator. Id.

Thereafter, the following testimony was elicited at trial. Trooper Madix testified that on March 19, 2014, at approximately 4:41pm, he was on a fixed radar post on Route 95 North at

exit 2 in Hopkinton. (Tr. at 2.) Trooper Madix testified that he had been trained to use his radar unit at the 2011 Rhode Island State Police Training Academy. Id. He checked his unit internally and externally prior to beginning his shift and both were in working condition. Id. Subsequently, Trooper Madix testified that he observed a vehicle travelling north toward him, at a speed greater than the normal flow of traffic, and that he used his radar unit to obtain a speed for the vehicle of 91 miles per hour (mph) in a posted 65 mph zone. Id. At that time, Trooper Madix pulled behind the car—a black Kia with Massachusetts’ registration 528WN8—to initiate a motor vehicle stop. Id. The operator was identified as the Appellant by his license number. Id. Consequently, Appellant was issued a citation for speeding 75 mph in a 65 mph zone. Id.

After Trooper Madix testified, the trial judge asked Appellant whether he had understood Trooper Madix’s testimony. Id. The Appellant again confirmed that he understood everything. Id. Thereafter, Appellant testified that at approximately 4:30pm that afternoon he saw Trooper Madix parked on the side of the highway and watched as the trooper pulled onto the highway as Appellant passed him. (Tr. at 3.) At the time, there was traffic on the highway. Id. According to Appellant, he thought Trooper Madix was trying to pull someone else over, so he pulled to the side to let Trooper Madix pass. Id. However, when Appellant pulled off to the right, he realized Trooper Madix was pulling him over. (Tr. at 5.)

The Appellant testified that when Trooper Madix pulled him over, he did not question Appellant about speeding; instead, he issued Appellant a field sobriety test. (Tr. at 5-7.) After the test, Appellant said he was given a speeding ticket. (Tr. at 7.) However, Appellant testified that it was impossible for him to speed because it was 4:30pm, and there was traffic on the highway. Id. The Appellant also maintained that the radar must have picked up another car’s speed because he was travelling under 65 mph. (Tr. at 8.) The Appellant further contended that

Trooper Madix pulled him over by mistake, but when Trooper Madix did not find him to be driving while intoxicated, he instead gave him a speeding ticket. (Tr. at 10.)

At the close of evidence, the trial judge issued a decision sustaining the charged violation. (Tr. at 12.) The trial judge found that Trooper Madix was trained to use his radar and the radar was calibrated. Id. The radar indicated Appellant was travelling at 91 mph. Id. Based on these findings, the trial judge established that Trooper Madix had met his burden of proof. Id. Thus, the trial judge sustained the charged speeding violation. Aggrieved by the trial judge's decision to sustain the charge, Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge...as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge...or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge...;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge's...decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348

(R.I. 1993) (citing Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” Link, 633 A.2d at 1348 (citing Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

In his written request for an appeal, Appellant asserted that he had been prejudiced at trial because he was not provided with an interpreter. At the hearing on appeal, Appellant contended, through an interpreter, that the trial judge erred because she did not consider his argument at trial. The Panel specifically asked Appellant whether he had been prejudiced because he did not have an interpreter at the trial, and Appellant responded in the negative. Instead, Appellant re-asserted his arguments from below, claimed that he was not heard at trial, and maintained that the charge should be reversed, accordingly.

The Rhode Island Supreme Court has held that “a trial justice is entrusted with the discretion to appoint an interpreter if he or she determines that a defendant is unable to understand the English language adequately.” State v. Lopez-Navor, 951 A.2d 508, 513 (R.I. 2008) (quoting State v. Ibrahim, 862 A.2d 787, 797- 98 (R.I. 2004)). The Court grants the trial judge “large discretion in the selection, appointment, and retention of an interpreter.” Id.; see

also State v. Deslovers, 40 R.I. 89, 115, 100 A. 64, 73 (1917). “Unless the complaining party provides clear evidence of prejudice, we will not disturb the trial justice's discretion.” Id.

Here, the trial judge asked the Appellant multiple times if he needed a translator, and Appellant declined. (Tr. at 1.) On Appeal, Appellant asserted that he had been prejudiced, but provided no evidence to support his assertion. See Appellant’s Request for Appeal; see also Lopez-Navor, 951 A.2d at 513 (requiring complaining party to provide “clear evidence of prejudice”). Thus, this Panel is satisfied that the trial judge’s determination that Appellant did not require a translator did not prejudice Appellant and that the trial judge made several reasonable inquiries with Appellant on the issue.

The Appellant also contends that the trial judge did not consider his testimony at trial. This Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348. “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” Id. Consequently, this Panel will not substitute its own judgment for that of the trial judge.

Here, the trial judge considered the testimony of Trooper Madix and the testimony of Appellant that he was not speeding. See Tr. at 11. After hearing the testimony presented at the trial and reviewing the evidence, the trial judge found Trooper Madix met his burden of proof by testifying that he was trained in the use of radar equipment, and that the devise was properly tested prior to beginning his shift. See State v. Sprague, 322 A.2d 36, 40 (1974). Therefore, this Panel holds the trial judge’s finding that Appellant was speeding was supported by reliable, probative, and substantial evidence of the record.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the trial judge did not abuse her discretion and her decision was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Magistrate William T. Noonan

Magistrate Alan R. Goulart

DATE: _____